

TITLE 25. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PROPOSED RULEMAKING FOR THE EMERGENCY SHELTER GRANTS (ESG) PROGRAM

NOTICE IS HEREBY GIVEN that the Department of Housing and Community Development (Department) proposes to formally amend regulations which govern implementation of the State Emergency Shelter Grants Program (ESG). The existing regulations are codified in Title 25, Division 1 Chapter 7 Subchapter 20 (commencing with section 8400) of the California Code of Regulations.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period begins **October 16, 2015** and closes at **5:00 p.m. on November 30, 2015**. The Department will consider comments received during this timeframe. The Department encourages comments to be submitted using Survey Monkey at:

<https://www.surveymonkey.com/r/ESGRegulations> .

Comments will also be accepted via e-mail at ESGregulations@hcd.ca.gov or via fax to (916) 263-3394, attention: Christina DiFrancesco, Planning and Evaluation Specialist. Written comments can also be sent via mail to

Department of Housing and Community Development,
Division of Financial Assistance,
P.O. Box 952054
Sacramento, CA 94252-2054
Attention: Christina DiFrancesco, Planning and Evaluation Section

PUBLIC HEARINGS

**November 19, 2015
1:00 PM - 4:00 PM
HCD Headquarters
2020 West El Camino Avenue, Rooms 402 A and 402 B
Sacramento, CA 95833**

**November 30, 2015
1:00 PM - 4:00 PM
Corporation for Supportive Housing
800 South Figueroa Street, Suite 810
Los Angeles, CA 90017**

AUTHORITY AND REFERENCE

HCD is conducting this rulemaking activity pursuant to the authority provided by Health and Safety Code Sections 50406 and 50896.3(b). These regulations implement, interpret and make specific amendments to Chapter 12 (commencing with Section 50896) of Part 2 of Division 31 of the Health & Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Health and Safety Code 50407 establishes that the Department is responsible for coordinating federal-state relationships in housing and community development. In conjunction with this responsibility, Health and Safety Code section 50406 directs the Department to be responsible for the allocation of federal Emergency Solutions Grants Program funds, (formerly known as the federal Emergency Shelter Grants Program). Consequently, the State of California receives ESG funds from the U.S. Department of Housing and Urban Development (hereinafter “HUD”) to make grants to eligible Private nonprofit organizations and Units of general purpose local government. These funds may be used for a wide variety of uses to serve homeless households or households at-risk of homelessness so long as the State and funded subrecipients comply with a comprehensive set of requirements prescribed by federal law and regulations, as well as State regulations.

These regulations can be found at Title 25, Division 1, Chapter 7, Subchapter 20, sections 8400-8421. They establish procedures for the award and disbursement of ESG funds, and establish policies and procedures for use of these funds to meet the purposes contained in the federal ESG regulations at 24 CFR Part 576. State authority for the administration of the ESG Program is contained in Health and Safety Code sections 50406.

Section: 8400. PURPOSE AND SCOPE

Subsections (a)-(d)

The proposed regulation changes to these sections would do the following:

- (a) change the name of the program from the Emergency Shelter Grants Program to the Emergency *Solutions* Grants Program consistent with this change in the federal statute and regulations;
- (b) include the citation for the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act which amended the program statute.
- (c) change the name of the McKinney Act to the correct name under current law.

(d) change the State acronym for the program from FESG to ESG.

Section 8201. DEFINITIONS

Proposed amendments would add or change the following definitions: “Action Plan”; “Administrative activities”; “Administrative Entity”; “Balance of State Allocation”; “Continuum of Care”; “Continuum of Care Allocation”; “Continuum of Care Service Area”; “Coordinated Entry”; “Core Practices”; “ESG”; “Eligible activities”; “Eligible Continuum of Care”; “Eligible Organization”; “Emergency shelter”; “ESG Entitlement”; “ESG Entitlement Area”; “ESG Nonentitlement”; “ESG Nonentitlement Area”; “HMIS”; “Homeless”; “Homelessness prevention activities”; “NOFA”; “Private nonprofit organization”; “Rapid Rehousing”; “Service Area”; “Site Control”; “Standard Agreement”; “Subrecipient”; “Subrecipient of the Administrative Entity”; “Unit of General Purpose Local Government”, and “Written Standards”.

Other changes add the citation to the HEARTH Act, and delete terms from the Definitions section of the regulations that are no longer being used.

Section 8402. ALLOCATION OF FUNDS

Subsection (a)

As proposed, this section establishes that the Department will accept and use Administration funds as permitted under 24 CFR sections 576.100 (c) and 576.108 (b). The Department will determine annually the percentage it will take and share among Units of general purpose local government. Available administrative amounts will be published for public comment in the State’s Annual Plan to HUD, pursuant to the requirements of 24 CFR Part 91, and published in the current NOFA.

Subsection (b)

As proposed, this section establishes two separate allocation pools for ESG funds. After deducting for State Administrative activities, ESG funds will be made available for Eligible activities through two allocations according to the formula set forth under the regulations; the Continuum of Care Allocation to be administered in accordance with section 8403; and the Balance of State Allocation to be administered in accordance with sections 8404 through 8407.

Subsection (c)

The purpose of this subsection is to set forth the formula factors for determining the amounts potentially available in each Continuum of Care Service Area.

Subsection (d)

The purpose of this subsection is to enable the Department to cap the amount of funds available to a Service Area under the formula in order to achieve a greater geographic balance of the funds among all eligible Continuums of Care of the State. Any cap on amounts available under the formula will be proposed in the Action Plan.

Subsection (e)

The purpose of this subsection is to establish that, in any year where the Department is issuing a NOFA, by January 31st, the Department will notify of the following:

- Service Areas and preliminary funding amounts within the Continuum of Care Allocation and the Balance of State Allocation;
- A solicitation of interest for Administrative Entities which includes timeframes for applications and approval;
- Where there is no intent to apply to be an Administrative Entity, a solicitation of interest to apply for Rapid Re-housing activities;
- A solicitation of interest from Continuums of Care to participate in Balance of State Allocation regional competition and;
- A solicitation of interest in applying for Rapid Rehousing activities under the Balance of State Allocation.

Section 8403. CONTINUUM OF CARE ALLOCATION

Subsection (a) (1)

The overall purpose of this section is to establish that funding for a Service Area in the Continuum of Care Allocation shall be administered by an approved Administrative Entity in the Service area in which it is located. Notwithstanding this general rule, subdivision (a) (1) permits an Administrative Entity to administer the funds of its Continuum of Care Service Area as well as the Service Area of a geographically contiguous Continuum of Care eligible to receive funds under the Balance of State Allocation if 100% of the available funds are used for Rapid Rehousing.

Subsection (a) (2)

The purpose of this subsection is to allow Continuum of Care Service Areas without an approved Administrative Entity to retain a portion of their formula allocation for Rapid Rehousing activities. In this instance the Continuum of Care would recommend a Rapid Rehousing provider, and the Department

would enter into a contract with the Rapid Rehousing provider for these activities. The amount available for Rapid Rehousing activities under this subdivision would be established in the Department's annual Action Plan, and the process by which the Continuum of Care selects this provider would have to meet certain minimum standards set forth in this subdivision.

Subsection (b)

This subsection provides that the Department will use the formula in section 8402 to reallocate any remaining funds that have not been conditionally reserved or allocated to participating Service Areas in the Continuum of Care and Balance of State Allocations.

Subsection (c)

The purpose of this subsection is to set forth the issues that the Department will evaluate in determining whether a Unit of general purpose local government will be designated as an Administrative Entity.

Subsection (d)

The purpose of this subsection is to set forth the qualifications of an Eligible Continuum of Care.

Subsection (e)

The purpose of this subsection is to set forth the qualifications of an eligible Administrative Entity and to establish that the Continuum of Care shall recommend an Administrative Entity for approval by the Department.

Subsection (f)

The purpose of this subsection is to require that the Continuum of Care and the Administrative Entity shall enter into a written agreement that specifies the roles and responsibilities of each entity to ensure compliance with federal and State requirements. The Continuum of Care and the Administrative Entity shall collaborate to the maximum extent feasible in determining Eligible activities, selecting providers, and administering the ESG funds.

Subsection (g)

The purpose of this subsection is to set forth general criteria by which Administrative Entities will select providers qualified to deliver Eligible activities in the Service Area.

Subsection (h)

The purpose of this subsection is to provide that the Action Plan will set forth any proposed limits on the number of contracts, subcontracts, and activities per contract between the Administrative Entity and the Subrecipient of the Administrative Entity.

Subsection (i)

The purpose of this subsection is to set forth specific requirements related to amounts available for Rapid Rehousing, and use of ESG funds to serve both Nonentitlement and Entitlement areas.

Subsection (j)

The purpose of this subsection is to set forth the general terms of the written agreement (known as the Standard Agreement) between the Administrative Entity and the Department.

Subsection (k)

The purpose of this subsection is to set forth the circumstances under which the Department may deny or revoke the designation of an approved Administrative Entity.

Subsection (l)

The purpose of this subsection is to notify Administrative Entities and Continuums of Care that The Department may request information from the Administrative Entity or the Continuum of Care, which demonstrates compliance with any or all of the above requirements. The Administrative Entity or Continuum of Care shall provide such information when requested.

Section 8404. BALANCE OF STATE ALLOCATION

Subsection (a) (1)

Subsection (a) establishes that the Department shall administer the Balance of State (BOS) Allocation for Service Areas without an ESG Entitlement. The purpose of subsection (a) (1) is to establish the requirements for a Continuum of Care to be eligible to participate in the BOS Allocation.

Subsection (a) (2)

The purpose of this subsection is to allow Continuum of Care Service Areas to retain a portion of their formula allocation for Rapid Rehousing activities, rather than compete for funds in a regional completion.

Subsection (a) (3)

The purpose of this subsection is to establish that funds remaining after allocating for Rapid Re-housing activities will be made available within three regional allocations: Northern Region, Bay Area Region, and Central and Imperial Valley Region.

Subsection (a) (4)

This subsection provides that, as requested in the NOFA, each Continuum of Care shall recommend to the Department an Eligible organization or organizations proposing Eligible activities within the Continuum of Care Service Area for funds available under the applicable regional allocation. It also sets forth the process by which the Continuum of Care shall make its recommendations.

Subsection (a) (5)

The purpose of this subsection is to clarify that all applications for funds available under the regional allocations will be evaluated by the Department pursuant to the requirements of sections 8406, 8408, and 8409. Depending on whether the regional allocations are oversubscribed, applications submitted for funds within a regional allocation may be rated and ranked pursuant to the requirements of 8407.

Subsection (b)

The purpose of this subsection is to provide that the Action Plan will set forth any proposed limits on the number of applications per Continuum of Care, and any limits on the number or type of activities, contracts, or subcontracts within an application.

Section 8405. NOTICE OF FUNDING AVAILABILITY

Subsection (a)

The purpose of this subsection is to notify interested persons that the Department will issue a NOFA soliciting applications for Eligible Activities within the regional allocations pursuant to 8404(a) (4) and (a) (5).

Subsection (b)

The purpose of this subsection is to outline the general contents of the NOFA.

Section 8406. NOFA APPLICATION PROCESS

Subsection (a):

The purpose of this subsection is to set forth the eligibility requirements for applications submitted under the regional competition.

Subsection (b):

The purpose of this subsection is to notify applicants and BOS Continuums of Care that applications under the NOFA will be rated according to the criteria in section 8407, but that even if an application is submitted as incomplete, the application will be scored as submitted and the Department may condition awards as necessary to secure missing information in order to ensure compliance with federal and State requirements, where doing so does not alter the competitive scoring.

Section: 8407: SELECTION CRITERIA FOR NOFA APPLICANTS

Subsection (a)

The purpose of subsection (a) is to set forth the rating criteria upon which applications recommended for funding within the regional allocations will be evaluated.

Subsection (b)

The purpose of this subsection is to specify how the application ranking process will work.

Section 8408. ELIGIBLE ACTIVITIES

Subsection (a)

The purpose of this subsection is to establish that State ESG funds awarded by an Administrative Entity or by the Department shall be used for Eligible activities as permitted by HUD pursuant to 24 CFR Part 576 in accordance with this section.

Subsection (b)

The purpose of this subsection is to establish that to address the State's priority needs and objectives pursuant to the Action Plan, the Department may limit the types of activities that may be funded in a particular NOFA.

Subsection (c):

The purpose of this subsection is to limit the percentage of an individual formula allocation under section 8302 that may be used for HMIS activities.

Subsection (d)

The purpose of this subsection is to establish that State ESG funds shall not be used for Renovation, Conversion, or Major Rehabilitation activities pursuant to 576.102. Minor repairs to an ESG-funded Emergency shelter that do not qualify as Renovation, Conversion, or Major Rehabilitation are an eligible use of State ESG funds.

Section 8409. CORE PRACTICES

Subsection (a):

The purpose of this subsection is to establish that, unless exempted by federal rules, all ESG funded activities shall utilize a Coordinated Entry system established by and consistent with the protocols of the Continuum of Care for the Service Area in which that program operates, and to set forth some basic State requirements for that system.

Subsection (b):

The purpose of this subsection is to set forth some basic housing first and progressive engagement and assistance practices that all ESG-assisted projects shall operate consistent with.

Section 8410. MATCH REQUIREMENTS

Subsections (a) and (b)

The proposed amendments to these subsections are nonsubstantive and are being made for clarity. They:

(a) update the federal citation to the match requirements to that in the ESG regulations, which is more commonly utilized when wanting detail on the match requirements, rather than the statutory citation now in regulations; and

(b) clarify that State funds used as ESG match can only come from programs serving homeless persons

Subsection (c)

The purpose of this subsection is to clarify that should the State, in meeting its federal ESG match requirement, need to request documentation of match from its Subrecipients and Subrecipients of the Administrative Entities that it will set forth any such requirement in the Action Plan and NOFA.

Section 8411. STANDARD AGREEMENT

Subsection (a):

The purpose of this subsection is to reiterate or establish what entities shall enter into a Standard Agreement with the Department and approximately when in the award process those Standard Agreements will follow.

Subsections (b) and (c)

The purpose of these subsections is to reiterate the federal and State authorities applicable to the ESG program with which the Standard Agreement must comply, and to outline other areas of the Standard Agreement.

Subsection (d):

The purpose of this subsection is to specify conditions under which modification to the Standard Agreement will be approved.

Subsection (e)

The purpose of this subsection is to clarify existing language in the regulations regarding performance requirements, and eliminate unnecessary requirements in the regulations.

Subsection (f) and sections 8413 through 8415 of the current regulations have been deleted since the language in these sections is no longer necessary or has been moved to other sections of the regulations.

Section 8412: DISBURSEMENT PROCEDURES

The changes to this section of the regulations are nonsubstantive or have been made to conform to other proposed changes to the regulations discussed in earlier sections.

Section 8413: RECORDKEEPING AND REPORTING

Subsection (a):

The purpose of this subsection is to establish a records retention requirement for all program records pertaining to a Standard Agreement.

Subsection (b)

The purpose of this subsection is to clarify the ESG reports that must be submitted to the Department.

Section 8414: MONITORING GRANT ACTIVITIES

Subsection (a)

The purpose of this subsection is to establish that Administrative Entities shall monitor the activities of their funded providers, and shall do onsite monitoring whenever necessary, but at least once per year.

Subsection (b)

The purpose of this subsection is to establish that the Department will monitor the performance of the Subrecipient based on a risk assessment and according to the terms of the Standard Agreement. The Department may also monitor the Subrecipient of the Administrative Entity based on a risk assessment.

Subsection (c)

The purpose of this subsection is to establish that the Department will monitor the performance of Administrative Entity and funded projects based on the performance measures used by HUD in ESG or the Continuum of Care program.

Subsection (d)

The purpose of this subsection is to set forth the Department's general rule regarding consequences for falsifying information.

Section 8415. AUDIT REQUIREMENTS

The changes made to this section of the regulations are nonsubstantive and were made to modify language related to governing federal authorities, and to use updated terms. Subsection (c) also clarifies that audits done at the request of the Department are paid for by the Subrecipient.

Section 8416. SANCTIONS

Subsections (a) through (e) make corrections to the program acronym, change “State recipient” to “Subrecipient”, and change capitalization of the word “grant”, which is no longer a defined term in the regulation. These changes are nonsubstantive.

Subsections (e) and (f)

Pursuant to the general authority provided in 24 CFR 576.01 (c), subsection (e) clarifies that the Department may prohibit an Administrative Entity from awarding to a particular Subrecipient of the Administrative Entity until appropriate actions are taken to ensure compliance with ESG requirements, Subsection (f) clarifies that the Department may take impose any other sanctions permitted under 24 CFR 576.501.

Section 8417: OTHER FEDERAL REQUIREMENTS

This is a general statement of applicability of all local, state, and federal laws pertaining to the ESG program. Amended language uses the terms “Subrecipient” and “Subrecipient of the Administrative Entity, rather than “State recipient”. This change is nonsubstantive.

ANTICIPATED BENEFITS

The anticipated benefits of the proposed regulatory changes, include, but are not limited to, the following:

- Assisting homeless and at-risk homeless
- Assisting non-profit organizations and local governments that receive ESG funds, and the communities they serve.
- Enhancing the ability of every ESG-eligible Continuum of Care Service Area to access ESG funds based on a formula distribution focused on factors reflective of homelessness need;
- Increasing local involvement and collaboration in ESG awards selection and funds administration;
- Increasing the percentage of available funds for Rapid Rehousing;
- Reducing application and contract workloads associated with ESG funding;
- Streamlining the ESG competitive application process and reporting requirements;
- Establishing core practices for ESG program implementation consistent with federal policy goals;
- Maintaining flexibility in establishing such things as program

outcome metrics and maximum award amounts to better respond to changes in local capacity, federal best practices, and available funding amounts.

EVALUATION OF WHETHER THESE REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

Pursuant to Government Code section 11346.5 subdivision (a) (3) (D) the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. The Department performed this evaluation, and there are no other existing State regulations which address this program. Therefore, pursuant to this evaluation, the Department has concluded that the proposed regulations are not inconsistent or incompatible with existing state regulations.

IMPACT OF PROPOSED REGULATIONS

LOCAL MANDATE

The Department has determined that these regulations do not impose a mandate on local agencies or school districts. Eligibility for the program is limited to entities demonstrating willingness and capacity to administer funds temporary housing and services funding to address homelessness. In any case, participation in the program is voluntary.

FISCAL IMPACT

The Department has determined that no savings or increased costs to any State agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in Federal funding to the State will result from the proposed action.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

Because participation in the ESG Program is voluntary, the Department has determined that the regulations will not affect the creation or elimination of jobs in California; the creation of new businesses or the elimination of existing businesses within California; or the expansion of businesses currently operating in California. It will not have a significant statewide impact on the health and welfare of California residents, worker safety, or the state's environment.

In addition to the "Anticipated Benefits" listed above, the proposed regulations will benefit the health and welfare of California residents by assisting

homeless, and at-risk homeless populations. It will also benefit non-profit organizations and local governments that receive ESG funds, and the communities they serve.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed action has no impact on small business because participation in the ESG Program is voluntary.

EFFECT ON HOUSING COSTS

The Department has determined that the proposed action has no significant impact on housing costs in California.

INITIAL DETERMINATION OF STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Participation in the program is voluntary.

COST IMPACTS ON PRIVATE PERSONS OR BUSINESSES DIRECTLY AFFECTED

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. While private businesses (including nonprofits) and individuals are eligible to receive program funds under the program, participation is voluntary.

CONSIDERATION OF ALTERNATIVES

The Department of Housing and Community Development must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department has discussed alternatives it considered, and why it chose the proposed revisions it selected, in its Initial Statement of Reasons.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS AND STATEMENT OF REASONS

The text of the proposed regulations is available upon request, along with the Initial Statement of Reasons, prepared by the Department, which provides the reasons for the proposals, and is available on the Department's web site, at <http://www.hcd.ca.gov/financial-assistance/emergency-solutions-grant-program/index.html>. All information the Department is considering as a basis for this proposal is maintained in a rulemaking file, which is available for inspection at the address noted below. Copies can be obtained by contacting Planning and Evaluation Section Representatives at the address and telephone number noted below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the written comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text--with changes clearly indicated--available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention to the Planning and Evaluation Section at the address indicated below. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting Planning and Evaluation Section Representatives at the address and telephone number noted below.

AVAILABILITY OF FINAL STATEMENT OF REASONS

At the conclusion of this rulemaking, a Final Statement of Reasons will be prepared as required by Government Code section 11346.9. This document will be available from the contact person/s named below.

CONTACT PERSON

HCD: **CHRISTINA DIFRANCESCO**
Planning and Evaluation Specialist
(916) 263-0415

HCD BACK-UP: **CONNIE MALLAVIA**
Planning and Evaluation Representative
(916) 263-2711

HCD Address: **State Department of Housing and Community
Development**

HCD Website: Copies of the Notice of Proposed Action, the Initial
Statement of Reasons, and the text of the regulations may
be accessed through our website at:
[http://www.hcd.ca.gov/financial-assistance/emergency-
solutions-grant-program/index.html](http://www.hcd.ca.gov/financial-assistance/emergency-solutions-grant-program/index.html)

HCD Facsimile No: (916) 263-3394

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period. Inquiries concerning the substance of the proposed rulemaking action, as well as requests for the documents noted should be directed to:

Department of Housing and Community Development
Division of Financial Assistance
P.O. Box 952054
Sacramento, CA 94252-2054
Attention: Christina DiFrancesco, Planning and Evaluation Section
E-mail: ESG regulations@hcd.ca.gov